

Remarks /Arguments

Claims 1 to 4, 6 to 9, 12 to 16, 24, 25, 30 to 33 and 35 to 37 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and Scallon (US 3,011,422). Claims 1, 2, 4 to 7, 9, 10, 12, 13, 15, 24 to 26, 28 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613) and Scallon (US 3,011,422). Claims 3, 8, 11, 14, 16, 27, 33 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613), Hoyt (US 3,413,769) and Scallon (US 3,011,422). Claims 1 to 3, 30 and 31 have been amended. Reconsideration of the application is respectfully requested.

**The Rejection of Claims 1 to 4, 6 to 9, 12 to 16, 24, 25, 30 and 37
in view of Gust, Smith and Scallon**

Claims 1 to 4, 6 to 9, 12 to 16, 24, 25, 30 and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and Scallon (US 3,011,422).

Claim 1 now recites: "A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the first portion and the slits."

Claim 2 now recites: "A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;

a first outward rim flange extending from the top of the hood for securing the hood to a foundation; and

a second outward rim flange extending from the bottom of the hood for covering the window well."

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REPLY TO OFFICE ACTION OF September 10, 2007

Claim 3 now recites: "A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;

a first outward rim flange extending from the top of the hood for securing the hood to a foundation and comprising a plurality of securing members; and

a second outward rim flange extending from the bottom of the hood for covering the window well."

Claim 24 recites: "A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood connected to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;

a first outward rim flange extending from the top of the hood for securing the hood to a foundation; and

a second outward rim flange extending from the bottom of the hood for covering the window well."

Claim 30 now recites: "A protector for a window well comprising:

a single-piece structure including a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the first portion and the slits."

Claims 1 to 3 and 30 have been amended and no longer recite "about" preceding "perpendicular". Support can be found in Figs. 3 and 5, for example.

In rejecting claims 1 to 4, 6 to 9, 12 to 16, 24, 25, 30 and 37, the Examiner recognizes that Gust fails to disclose the claimed plurality of slits in the hood, and looks to Smith and Scallon to cure this deficiency.

U.S. Patent No. 3,123,868 to Gust purports to describe a window well cover. In particular, Gust explains:

“Mounted circumferentially in the lower portion of the dome 12 . . . is a substantially U-shaped or semicircular base bar 13 of suitable metal” (Gust, col. 1, lines 65 to 68).

“The bar 13 is substantially T-shaped in cross-section, said bar including on its outer periphery a circumferentially extending flange 15” (Gust, col. 1, lines 70 to 73).

U.S. Patent No. 3,046,613 to Smith also relates to a window well cover. Smith explains that:

“In the arrangement illustrated in Figures 1 and 2 it is preferred that the side wall 32 shall be of a perforated metallic material as for example, expanded metal of the expanded lathe type or sheet metal having apertures, passages, or slots therethrough of a screen-like or grid-like character” (Smith, col. 3, lines 21 to 27).

“By virtue of the periphery of the cover overlying the upper edge of the side wall 32 of the window well enclosure, the cover serves to protect the ingress of rain through the ventilating openings in this side wall. In turn, the side wall by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24 of the window well retaining wall 22 further preventing rain being blown into the well.” (Smith, col. 3, lines 14 to 21).

“A further modified construction is illustrated in Figure 5 In the arrangement of Figure 5, an “apertured metallic side wall of the enclosure operates as a protective means for the well while the plastic inner wall serves to close the perforations in the outer wall and thus completely protect the window well from ingress of rain, snow or the like” (Smith, see col. 3, lines 62-63, 69- 74).

U.S. Patent No. 3,011,422 to Scallon does not relate to a window well cover at all. Rather, Scallon “relates to the ventilation of air spaces in the structure of buildings or the like” (Scallon, col. 1, lines 6 to 7). A stated important object of Scallon is “the provision of a unitary self-contained ventilating device for use in ventilating the air spaces in building structures” (Scallon, col. 1, lines 26 to 28). Purportedly, “the ventilating device [in Scallon] is formed in its outer surface with one or a plurality of columns of separate parallel louvers which extend outwardly of the device” (Scallon, col. 1, lines 31 to 32).

It is respectfully submitted that it would not have been obvious to one having ordinary

skill in the art at the time of the invention to modify Gust's protector to show "the first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as claimed in claims 1 to 3, 24 and 30 nor "the first portion of the hood perpendicular to a base" as claimed in claims 1 to 3 and 30 of the present invention. None of the cited references teach or disclose these features. Nor do any of the references teach or disclose even the first portion of the hood about perpendicular to a base, and certainly not the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion as claimed. Moreover, Scallion does not at all relate to window well covers nor even to window wells or windows.

As explained above, it is respectfully submitted that none of the cited references teach or disclose "the first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as claimed in claims 1 to 3, 24 and 30 of the present invention.

As admitted in the Office Action on page 3, for example, "Gust does not show the first portion comprising a plurality of slits angled through the first portion."

Smith also does not teach or disclose a first portion of the hood . . . comprising a plurality of slits, and certainly does not teach or disclose a "first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as claimed. Rather, Smith clearly states that "it is preferred that the side wall 32 shall be of a perforated metallic material . . . having apertures, passages, or slots therethrough of a screen-like or grid-like character." Figures 1, 2, 4, 6 and 7 of Smith clearly show the screen-like or grid-like character of Smith, which is clearly not the same as the slits of the present invention. Moreover, in the arrangement of Figure 5 of Smith, ventilation of the window well is not provided for at all since a "plastic inner wall serves to close the perforations in the outer wall and thus completely protect the window well from ingress of rain, snow or the like" (see Smith, col. 3, lines 71 to 74). Thus, not only does Smith not teach or disclose a "first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as recited in claims 1 to 3, 24 and 30 of the present invention, but Smith actually teaches away from using plastic for ventilation of a window well thereby discouraging one skilled in the art to combine Gust with Smith.

With respect to Scallon, it is respectfully submitted that Scallon also does not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as claimed in claims 1 to 3, 24 and 30. In fact, the ventilation device in Scallon is not a window well cover at all nor does it have a curved or other portion at all. Rather, in Scallon, “face plate 14 is formed with a plurality of parallel transverse slits 17 within the area enclosed by marginal support 15, which define between them narrow parallel bars 18”, which “are struck outwardly of the face plate at an angle to the plane thereof to form louvers for deflecting rain or other precipitation and preventing its entrance into the opening in the building” (see, e.g. Scallon, col. 2, lines 16 to 22). As is clearly shown in Figure 2 of Scallon, louvers 18 “are struck outwardly from the plane of the face plate. Scallon even states that “in the illustrated and preferred form . . . the louver [18] is . . . struck outwardly from the plane of the face plate at an angle of 30⁰” (see, e.g. Scallon, col. 2, lines 31 to 34). The present invention does not rely on louvers to provide ventilation while protecting against rain and other forms of precipitation from entering the window well. Rather, as is clear from Figure 4 and paragraph [0018] of the present invention, preferably, the slits 50 are angled so that liquid that enters the slits exits the slits without entering the window well cover. For example, an angle 55 defined by the intersection of the bottom of the slits 50 with the inside of the window well cover 10 can be less than 90 degrees. See, e.g. Figure 4 and paragraph [0018] of the present invention. Louvers 18 in Scallon are not slits angled through the first portion as claimed but rather are struck outwardly from the plane of the face plate 14. See, e.g. Scallon, Fig. 2 and col. 2, lines 31 to 34. Slits 17 in Scallon are also not angled through the first portion as claimed in claims 1 to 3, 24 and 30 but rather “define the narrow bars forming the louvers 18” (see, e.g. Scallon, col. 2, lines 55 to 57). Indeed, as noted above, the device in Scallon does not have a first portion perpendicular to the base and a second curved portion which forms a hood in the shape of a quarter sphere. Scallon does not even have a curved or other portion at all.

Second, it is respectfully submitted that none of the cited references teach or disclose “the first portion of the hood perpendicular to a base” as claimed in claims 1 to 3 and 30 of the present invention, nor even the first portion of the hood “about perpendicular” to a base as previously claimed. In Gust, “the embodiment . . . which has been illustrated comprises a substantially

quarter-spherical hood or dome 12" (Gust, col. 1, lines 59 to 61, which clearly does not comprise a "first portion of the hood perpendicular to a base" as claimed in claims 1 to 3 and 30 of the present invention. Dome 12 in Gust is spherical and thus has a circular profile. As such, there is no portion of the spherical hood of Gust that is perpendicular to a base or even about perpendicular to a base, and certainly no portion of the spherical hood perpendicular to a base that could accommodate slits angled through the first portion as claimed. In fact, Dome 12 in Gust has no slits at all.

In Smith, "the side wall [32] by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24 of the window well retaining wall 22" (see, e.g. Smith, col. 3, lines 18 to 21) and thus also clearly does not teach or disclose "the first portion of the hood perpendicular to a base" as claimed in claims 1 to 3 and 30 of the present invention. Likewise, Scallion also does not teach or disclose "the first portion of the hood perpendicular to a base" as claimed in claims 1 to 3 and 30 of the present invention as "face plate 14 is formed with a plurality of parallel transverse slits 17 within the area enclosed by marginal support 15, which define between them narrow parallel bars 18" that "are struck outwardly of the face plate at an angle to the plane thereof to form louvers" (see, e.g. Scallion, col. 2, lines 16 to 22 and Fig. 2).

Moreover, even if all of the claimed limitations were found in the cited references, which Applicants respectfully maintain they are not, Scallion does not at all relate to window well covers nor even to window wells or windows. Rather, Scallion "relates to the ventilation of the air spaces in the structure of buildings or the like" (Scallion, col. 1, lines 6 to 7). Scallion is in a completely different and non-analogous art than the present invention and therefore one having ordinary skill in the art of window well covers (or even window wells or windows) at the time of invention would not look to Scallion to modify Gust's protector as suggested in the Office Action. Furthermore, Smith clearly addresses the problem of protecting against the ingress of rain "by virtue of the periphery of the cover overlying the upper edge of the side wall 32" and because "the side wall by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24" (see Smith, col. 3, lines 14 to 21), further supporting that one having ordinary skill in the art at the time of invention would not look to Scallion to modify Gust's

protector as suggested in the Office Action. There is no suggestion or reason to modify Gust's protector or even to combine any of the cited references at all, and certainly not to square off Gust's dome to form a first portion of the hood perpendicular to a base as claimed.

Withdrawal of the rejection of claims 1, 2, 3, 24 and 30 under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and Scallon (US 3,011,422) is therefore respectfully requested. As claims 4, 6, 9, 12, 25 and 37 depend from and incorporate the limitations of claim 1, claims 7, 13 and 15 depend from and incorporate the limitations of claim 2, and claims 8, 14 and 16 depend from and incorporate the limitations of claim 3, withdrawal of the Examiner's rejection of these claims also is respectfully requested.

With further respect to claims 12 to 14, which recite "wherein the hood is constructed by injection molding", it is respectfully submitted that these claims claim a product-by-process, and that the recitation of an injection molding process must be accorded patentable weight because a window well cover manufactured via injection molding as claimed *is substantially different in structure* from the window well covers in the applied prior art. *MPEP 2113*. As explained in *MPEP 2113*:

The **structure** implied by the process steps **should be considered** when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.

Neither Gust, Smith nor Scallon teach or disclose using an injection molding process. It is asserted in the Office Action on page 8 that the products reasonably appear to be identical or slightly different from each due to their different manufacturing processes and therefore asserts that the claims are properly treated under the Product by Process limitation policy. However, merely because products may *appear* to be identical or slightly different, products constructed by different processes may and often are substantially different in structure, possessing distinctive structural characteristics. This is particularly so with respect to products constructed by injection molding, which may and typically does substantially affect a products structure, such as with respect to the product's strength-to-weight ratio, hardness and uniformity in terms of thickness,

strength, transparency, etc., for example. This is partially a result of injection molding generally allowing for higher pressure to be used during the manufacturing process than with more conventional techniques of manufacturing plastics, such as blow molding, for example. Withdrawal of the rejections to claims 12 to 14 under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and Scallon thus is respectfully requested for this reason as well.

With further respect to claims 15 and 16, which recite “wherein the second outward rim flange covers the entire window well”, it is respectfully submitted that Gust does not teach or disclose an outward rim flange that covers the entire window well as claimed, as asserted in the Office Action. Flange 15 in Gust circumferentially *extends from the outer periphery* of a substantially U-shaped or semicircular bar 13, which is substantially T-shaped in cross section (see Gust, col. 1, lines 66 to 72 and Fig. 3). As explained in [0014] of the present specification, in a preferred embodiment of the present invention, “the second outward rim flange 70 can extend under the protective hood 20 so as to cover the entire window well” (see paragraph [0014] of the present invention, for example). As Flange 15 of Gust circumferentially *extends from the outer periphery* of bar 13, Flange 15 in Gust does not cover the entire window well as claimed. Flange 15 does not extend under the hood so as to cover the entire window well as claimed. Withdrawal of the rejections to claims 15 and 16 under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and Scallon thus is respectfully requested for this reason as well.

The Rejection of Claim 31 in view of Gust, Smith and Scallon

Claim 31 also stands rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and Scallon (US 3,011,422).

Claim 31 now recites: “A protector for a window well comprising:
a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the first portion and the slits;

a hinge coupled to the second portion.”

Claim 31 has been amended and no longer recites “about” preceding “perpendicular”. Support can be found in Figs. 3 and 5, for example. As such, and that claim 31 also recites “the first portion of the hood . . . further comprising a plurality of slits angled through the first portion”, it is respectfully submitted that, for at least the reasons set forth above with regard to claims 1 to 3, 24 and 30, the Examiner’s rejection of claim 31 should be withdrawn.

The Rejection of Claims 32, 33, 35 and 36 in view of Gust, Smith and Scallon

Claims 32, 33, 35 and 36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and Scallon (US 3,011,422). Claims 32, 33, 35, and 36 recite:

“32. The protector of claim 2, further comprising a hinge secured to the first outward rim flange.”

“33. The protector of claim 3, further comprising a hinge secured to the first outward rim flange.”

“35. The protector of claim 24, further comprising a hinge secured to the first outward rim flange.”

“36. The protector of claim 30, further comprising a hinge secured to the first outward rim flange.”

For the reasons set forth above with regard to claims 2, 3, 24 and 30, withdrawal of the rejection of claims 32, 33, 35 and 36, which depend from claims 2, 3, 24 and 30, respectively, under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and Scallon is respectfully requested.

In addition, it is respectfully submitted that Smith does not teach or disclose “a hinge secured to the first outward rim flange” as claimed in claims 32, 33, 35 and 36 of the present invention. Rather, in Smith, “cover 34 is provided with an embracing metallic reinforcing rim 44

which is C-shaped in cross section and which is received in a channel member 46 carried by a bracket 48 which is secured as by bolts 50 to the wall 10.” (Smith, col. 3, lines 7 to 11). Reinforcing rim 44 is **not** an outward rim flange to which a hinge is secured as claimed. Rather, reinforcing rim 44 forms part of the hinge itself, as evident from it being C-shaped in cross-section and being received in a channel member carried by bracket 48. Indeed, Smith characterizes the arrangement of elements 44, 46 and 48 as a piano type of hinge: “Thus, there is provided a piano type of hinge whereby the entire cover 34 may be raised or lowered” (see, e.g. Smith, col. 2, lines 11 to 13). In contrast, the first outward rim flange of the present invention does not form part of the hinge itself, as is clear from claims 32, 33, 35 and 36 for example. See also Fig. 5 and paragraph [0021], for example. Withdrawal of the rejection of claims 32, 33, 35 and 36 under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and Scallon thus is respectfully requested for this reason as well.

**The Rejection of Claims 1, 2, 4 to 7, 9, 10, 12, 13, 15, 24, 25,
26, 28 and 30 in view of Mackes, Smith and Scallon**

Claims 1, 2, 4 to 7, 9, 10, 12, 13, 15, 24, 25, 26, 28 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613) and Scallon (US 6,052,959).

Claims 1 to 3 and 30 have been amended and no longer recite “about” preceding “perpendicular”. Support can be found in Figs. 3 and 5, for example.

In rejecting claims 1, 2, 4 to 7, 9, 10, 12, 13, 15, 24, 25, 26, 28 and 30, the Examiner recognizes that Mackes fails to disclose the claimed plurality of slits in the hood, and looks to Smith and Scallon to cure this deficiency.

Mackes (US 4,330,500) purports to describe methods of manufacturing a double-flanged window well cover. Mackes explains “Since prior producers of window well covers from drawn thermoplastic sheets have been unable to produce a base flange, the unit has a reinforcing strip 28

at the base edge 20'." (Mackes, col. 3, lines 60 to 64). Smith (US 3,046,613) and Scallon (US 3,011,422) are discussed above.

It is respectfully submitted that it would not have been obvious to one having ordinary skill in the art at the time of the invention to modify Mackes' protector to show "the first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as claimed in claims 1 to 3, 24 and 30 nor "the first portion of the hood perpendicular to a base" as claimed in claims 1 to 3 and 30 of the present invention. None of the cited references teach or disclose these features. Nor do any of the references teach or disclose even the first portion of the hood about perpendicular to a base, and certainly not the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion as claimed. Moreover, Scallon does not at all relate to window well covers nor even to window wells or windows.

As explained above, it is respectfully submitted that none of the cited references teach or disclose "the first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as claimed in claims 1 to 3, 24 and 30 of the present invention.

As admitted in the Office Action on page 5, for example, "Mackes does not show the first portion comprising a plurality of slits angled through the first portion."

Smith also does not teach or disclose a first portion of the hood . . . comprising a plurality of slits, and certainly does not teach or disclose a "first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as claimed. Rather, Smith clearly states that "it is preferred that the side wall 32 shall be of a perforated metallic material . . . having apertures, passages, or slots therethrough of a screen-like or grid-like character." Figures 1, 2, 4, 6 and 7 of Smith clearly show the screen-like or grid-like character of Smith, which is clearly not the same as the slits of the present invention. Moreover, in the arrangement of Figure 5 of Smith, ventilation of the window well is not provided for at all since a "plastic inner wall serves to close the perforations in the outer wall and thus completely protect the window well from

ingress of rain, snow or the like” (see Smith, col. 3, lines 71 to 74). Thus, not only does Smith not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as recited in claims 1, 2, 24 and 30 of the present invention, but Smith actually teaches away from using plastic for ventilation of a window well thereby discouraging one skilled in the art to combine Mackes with Smith.

With respect to Scallon, it is respectfully submitted that Scallon also does not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as claimed in claims 1 to 3, 24 and 30. In fact, the ventilation device in Scallon is not a window well cover at all nor does it have a curved or other portion at all. Rather, in Scallon, “face plate 14 is formed with a plurality of parallel transverse slits 17 within the area enclosed by marginal support 15, which define between them narrow parallel bars 18”, which “are struck outwardly of the face plate at an angle to the plane thereof to form louvers for deflecting rain or other precipitation and preventing its entrance into the opening in the building” (see, e.g. Scallon, col. 2, lines 16 to 22). As is clearly shown in Figure 2 of Scallon, louvers 18 “are struck outwardly from the plane of the face plate. Scallon even states that “in the illustrated and preferred form . . . the louver [18] is . . . struck outwardly from the plane of the face plate at an angle of 30°” (see, e.g. Scallon, col. 2, lines 31 to 34). The present invention does not rely on louvers to provide ventilation while protecting against rain and other forms of precipitation from entering the window well. Rather, as is clear from Figure 4 and paragraph [0018] of the present invention, preferably, the slits 50 are angled so that liquid that enters the slits exits the slits without entering the window well cover. For example, an angle 55 defined by the intersection of the bottom of the slits 50 with the inside of the window well cover 10 can be less than 90 degrees. See, e.g. Figure 4 and paragraph [0018] of the present invention. Louvers 18 in Scallon are not slits angled through the first portion as claimed but rather are struck outwardly from the plane of the face plate 14. See, e.g. Scallon, Fig. 2 and col. 2, lines 31 to 34. Slits 17 in Scallon are also not angled through a first portion as claimed in claims 1 to 3, 24 and 30 but rather “define the narrow bars forming the louvers 18” (see, e.g. Scallon, col. 2, lines 55 to 57). Indeed, as noted above, the device in Scallon does not have a first portion perpendicular to the base and a second curved portion which forms a hood in the shape of a quarter sphere. Scallon does not

have a curved or other portion at all.

Second, it is respectfully submitted that none of the cited references teach or disclose “the first portion of the hood perpendicular to a base” as claimed in claims 1 to 3 and 30 of the present invention, nor even the first portion of the hood “about perpendicular” to a base as previously claimed. In Mackes, “Fig. 1 shows . . . [a] bubble B [that] is the quadrant of a spheroidlike form” (see, e.g. Mackes, col. 3, lines 25 to 27 and Fig. 1) and thus clearly does not teach or show a “first portion of the hood perpendicular to a base” as claimed in claims 1 to 3 and 30 of the present invention. Indeed, Mackes actually teaches away from such claimed feature by stating that “the primary component of a window well cover is formed as a quadrant of a spheroid-like form, which will sometimes be hereinafter called a “bubble” (see, e.g. Mackes, col. 1, lines 22 to 24). As bubble B in Mackes is the quadrant of a spheroidlike form, it has a circular profile. As such, there is no portion of bubble B of Mackes that is perpendicular to a base or even about perpendicular to a base, and certainly no portion of the bubble perpendicular to a base that could also accommodate slits angled through the first portion as claimed. In fact, bubble B in Mackes has no slits at all.

In Smith, “the side wall [32] by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24 of the window well retaining wall 22” (see, e.g. Smith, col. 3, lines 18 to 21) and thus also clearly does not teach or disclose “the first portion of the hood perpendicular to a base” as claimed in claims 1 to 3 and 30 of the present invention. Likewise, Scallon also does not teach or disclose “the first portion of the hood perpendicular to a base” as claimed in claims 1 to 3 and 30 of the present invention as “face plate 14 is formed with a plurality of parallel transverse slits 17 within the area enclosed by marginal support 15, which define between them narrow parallel bars 18” that “are struck outwardly of the face plate at an angle to the plane thereof to form louvers” (see, e.g. Scallon, col. 2, lines 16 to 22 and Fig. 2).

Moreover, even if all of the claimed limitations were found in the cited references, which Applicants respectfully maintain they are not, Scallon does not at all relate to window well covers nor even to window wells or windows. Rather, Scallon “relates to the ventilation of the

air spaces in the structure of buildings or the like” (Scallon, col. 1, lines 6 to 7). Scallon is in a completely different and non-analogous art than the present invention and therefore one having ordinary skill in the art of window well covers (or even window wells or windows) at the time of invention would not look to Scallon to modify Mackes’ protector as suggested in the Office Action. Furthermore, Smith clearly addresses the problem of protecting against the ingress of rain “by virtue of the periphery of the cover overlying the upper edge of the side wall 32” and because “the side wall by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24” (see Smith, col. 3, lines 14 to 21), further supporting that one having ordinary skill in the art at the time of invention would not look to Scallon to modify Mackes’ protector as suggested in the Office Action. There is no suggestion or reason to modify Mackes’ protector or even to combine any of the cited references at all, and certainly not to square off Mackes’ bubble to form a first portion of the hood perpendicular to a base as claimed.

Withdrawal of the rejections of claims 1, 2, 24 and 30 under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613) and Scallon (US 3,011,422) is therefore respectfully requested. As claims 4 to 7, 9, 10, 12, 13, 15, 25, 26 and 28 each depend from one of claims 1, 2 and 24, withdrawal of the rejection of these claims also is respectfully requested.

With further respect to claims 5, 25 and 28, it is respectfully submitted that, for additional reasons to those heretofore discussed, one skilled in the art at the time of invention would not have looked towards either Smith or Scallon to modify Mackes as suggested in the Office Action since Mackes actually teaches away from modifying its window well cover to incorporate slits or openings of any type. Mackes asserts that an object of its alleged invention “is to provide a method for making an improved window well cover having an integral flange at both the front and rear of the bubble” (Mackes, col. 2, lines 40 to 43). Mackes explains that “the [allegedly] improved method of producing window well covers includes drawing operations in which a sheet of heated thermoplastic resin is drawn into a female mold or onto a male mold [and] vacuum and/or air pressure may be used to bring the sheet snugly against the contours of the mold” (Mackes, col. 4, lines 9 to 14). “The wall flanges 24 are at the base of the bubble BB and are

trimmed flashing edges of the plastic sheet from which the bubble BB is drawn” (Mackes, col. 4, lines 28 to 30). As such, Mackes teaches away from modifying its window well cover to incorporate slits or openings of any type since such would adversely affect the preferred manufacturing operation and its use of vacuum and/or air pressure that is described integrally with respect to the resulting structure of its cover.

With further respect to claims 12 and 13, which recite “wherein the hood is constructed by injection molding”, it is respectfully submitted that these claims claim a product-by-process, and that the recitation of an injection molding process must be accorded patentable weight because a window well cover manufactured via injection molding as claimed *is substantially different in structure* from the window well covers in the applied prior art. *MPEP 2113*. Neither Mackes, Smith nor Scallon teach or disclose using an injection molding process. It is asserted in the Office Action on page 8 that the products reasonably appear to be identical or slightly different from each due to their different manufacturing processes and therefore asserts that the claims are properly treated under the Product by Process limitation policy. However, merely because products may *appear* to be identical or slightly different, products constructed by different processes may and often are substantially different in structure, possessing distinctive structural characteristics. This is particularly so with respect to products constructed by injection molding, which may and typically does substantially affect a products structure, such as with respect to the product’s strength-to-weight ratio, hardness and uniformity in terms of thickness, strength, transparency, etc., for example. This is partially a result of injection molding generally allowing for higher pressure to be used during the manufacturing process than with more conventional techniques of manufacturing plastics, such as blow molding, for example. Moreover, as discussed above with respect to the rejections to claims 5, 25 and 28, Mackes discusses how a drawing operation produces its flanges: “The wall flanges 24 are at the base of the bubble BB and are trimmed flashing edges of the plastic sheet from which the bubble BB is drawn” (Mackes, col. 4, lines 28 to 30). Withdrawal of the rejections to claims 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith and Scallon is therefore respectfully requested for this reason as well.

With further respect to claim 15, which recites “[t]he protector as described in claim 2 wherein the second outward rim flange covers the entire window well”, it is respectfully submitted that Mackes does not teach or disclose an outward rim flange that covers the entire window well as claimed, as asserted in the Office Action. Reinforcing strip 28 at the base edge 20' of Mackes is not an outward rim flange that covers the entire window well as asserted in the Office Action. As explained in [0014] of the present specification, in a preferred embodiment of the present invention, “the second outward rim flange 70 can extend under the protective hood 20 so as to cover the entire window well” (see paragraph [0014] of the present invention, for example). Reinforcing strip 28 at the base edge 20' of Mackes does not extend under the window well cover so as to cover the entire window well. Withdrawal of the rejection of claim 15 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith and Scallon thus is respectfully requested for this reason as well.

**The Rejection of Claims 3, 8, 11, 14, 16, 27, 33 and 38
in view of Mackes, Smith, Hoyt and Scallon**

Claims 3, 8, 11, 14, 16, 27, 33 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613), Hoyt (US 3,413,769) and Scallon (US 3,011,422).

Claim 3 now recites: “A protector for a window well comprising:
a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;
a first outward rim flange extending from the top of the hood for securing the hood to a foundation and comprising a plurality of securing members; and
a second outward rim flange extending from the bottom of the hood for covering the window well.”

Mackes (US 4,330,500), Smith (US 3,046,613) and Scallon (US 3,011,422) are discussed above.

Hoyt (US 3,413,769) purports to describe a basement drain. In Hoyt, holder 94 “is an elongated piece of material suitably fixed to an inner wall having an outwardly extending flange 98 under which the upper end 80 of the passage-forming member 40 is tucked under during installation” (Hoyt, col. 2, lines 35 to 39).

It is respectfully submitted that it would not have been obvious to one having ordinary skill in the art at the time of the invention to modify Mackes’s protector to show a plurality of slits in view of Smith, Hoyt and Scallon as asserted in the Office Action. As discussed above with respect to claims 1, 2, 24 and 30, neither Smith nor Scallon teach or disclose a “first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion” as claimed. Nor do any of the references teach or disclose even the first portion of the hood about perpendicular to a base, and certainly not the first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion as claimed. Moreover, neither Scallon nor Hoyt relate to window well covers at all or even to window wells or windows at all.

Hoyt also does not teach or disclose a “first portion of the hood perpendicular to a base and further comprising a plurality of slits angled through the first portion” as claimed, nor has such been asserted in the Office Action. In response to the assertion in the Office Action on page 7 that “Hoyt shows a plurality of securing members (94) securing the first rim flange to a wall”, Applicants respectfully point out that Hoyt does not show a **plurality** of holder 94 at all. Rather, Hoyt shows “a holder 94 which is an elongated piece of material . . .” (Hoyt, col. 2, lines 35 to 39). The use of “a”, “an” and “piece” make clear that there is only one holder 94.

Furthermore, Hoyt, allegedly showing a basement drain, is in a completely different and non-analogous art than that of the window well protector of the present invention. There is no suggestion or reason to modify Mackes’ protector or even to combine any of the cited references at all. Thus, even if Hoyt did show a plurality of securing members, which Applicants respectfully maintain it does not, one skilled in the art of window well protectors at the time of invention would not have looked to Hoyt to modify Mackes as asserted in the Office Action.

Withdrawal of the rejection of claim 3 under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613), Hoyt (US 3,413,769) and Scallon (US 3,011,422) is therefore respectfully requested. As claims 8, 11, 14, 16, 27, 33 and 38 depend from claim 3, withdrawal of the Examiner's rejection of these claims is also respectfully requested.


With further respect to claim 16, which recites "[t]he protector as described in claim 3 wherein the second outward rim flange covers the entire window well", it is respectfully submitted that Mackes does not teach or disclose an outward rim flange that covers the entire window well as claimed, as asserted in the Office Action. Reinforcing strip 28 at the base edge 20' of Mackes is not an outward rim flange that covers the entire window well as asserted in the Office Action. As explained in [0014] of the present specification, in a preferred embodiment of the present invention, "the second outward rim flange 70 can extend under the protective hood 20 so as to cover the entire window well" (see paragraph [0014] of the present invention, for example). Reinforcing strip 28 at the base edge 20' of Mackes does not extend under the window well cover so as to cover the entire window well. Withdrawal of the rejection of claim 16 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith, Hoyt and Scallon thus is respectfully requested for this reason as well.

With further respect to claim 33 which recites: "The protector of claim 3, further comprising a hinge secured to the first outward rim flange", it is respectfully submitted that Smith does not teach or disclose "a hinge secured to the first outward rim flange" as claimed in claim 33 of the present invention. As discussed above, reinforcing rim 44 of Smith is not an outward rim flange to which a hinge is secured as claimed, but rather reinforcing rim 44 forms part of the hinge itself. Withdrawal of the rejection to claim 33 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith, Hoyt and Scallon thus is respectfully requested for this reason as well.

Conclusion

The present application is respectfully submitted as being in condition for allowance and applicants respectfully request such action.

Respectfully submitted,
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